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FADROWSKI DRUM DISPOSAL SITE  
FRANKLIN, WISCONSIN

UNILATERAL ADMINISTRATIVE ORDER  
FOR REMEDIAL ACTION

## TABLE OF CONTENTS

I.	INTRODUCTION AND JURISDICTION . . . . .	1
II.	PARTIES BOUND . . . . .	2
III.	DEFINITIONS . . . . .	3
IV.	DETERMINATIONS . . . . .	6
V.	NOTICE TO THE STATE . . . . .	19
VI.	ORDER . . . . .	19
VII.	WORK TO BE PERFORMED . . . . .	19
VIII.	ADDITIONAL RESPONSE ACTIONS . . . . .	24
IX.	EPA PERIODIC REVIEW . . . . .	25
X.	ENDANGERMENT AND EMERGENCY RESPONSE . . . . .	26
XI.	PROGRESS REPORTS . . . . .	27
XII.	QUALITY ASSURANCE, SAMPLING AND DATA ANALYSIS . . . . .	27
XIII.	COMPLIANCE WITH APPLICABLE LAWS . . . . .	29
XIV.	REMEDIAL PROJECT MANAGER . . . . .	30
XV.	PROJECT COORDINATOR AND CONTRACTORS . . . . .	31
XVI.	SITE ACCESS AND DOCUMENT AVAILABILITY . . . . .	33
XVII.	RECORD PRESERVATION . . . . .	35
XVIII.	DELAY IN PERFORMANCE . . . . .	37
XIX.	REIMBURSEMENT OF RESPONSE COSTS . . . . .	38
XX.	UNITED STATES NOT LIABLE . . . . .	39
XXI.	ENFORCEMENT AND RESERVATIONS . . . . .	40
XXII.	ACCESS TO ADMINISTRATIVE RECORD . . . . .	42
XXIII.	NOTICE OF INTENT TO COMPLY . . . . .	42
XXIV.	EFFECTIVE DATE AND TERMINATION . . . . .	43
XXV.	OPPORTUNITY TO CONFER . . . . .	43

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region V

In The Matter Of:

Fadrowski Drum Disposal Site

Acme Printing Ink, Co.

n/k/a INX International Ink Co., et al.

Respondents.

Proceeding Under Section 106(a) of the  
Comprehensive Environmental Response,  
Compensation, and Liability Act of 1980,  
as amended (42 U.S.C. § 9606(a))

U.S. EPA

Docket No. ....

ADMINISTRATIVE ORDER  
FOR REMEDIAL DESIGN AND REMEDIAL ACTION

I. INTRODUCTION AND JURISDICTION

1. This Order directs Respondents to implement the remedial design for the remedy described in the Record of Decision for the Fadrowski Drum Disposal site, dated June 10, 1991, by performing a remedial action. This Order is issued to Respondents by the United States Environmental Protection Agency ("EPA") under the authority vested in the President of the United States by section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9606(a). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580 (52 Fed. Reg. 2926), and was further delegated to the Regional Administrator on September 13, 1987 by EPA Delegation No. 14-14 and 14-14A, and to

the Director, Waste Management Division, Region 5, by delegation 14-14B.

## II. PARTIES BOUND

2. This Order shall apply to and be binding upon each Respondent identified in paragraph 14 and its successors and assigns. Each Respondent is jointly and severally responsible for carrying out all activities required by this Order. Failure of one or more Respondents to comply with all or any part of this Order shall not in any way excuse or justify noncompliance by any other Respondents. No change in the ownership, corporate status, or other control of any Respondents shall alter any of the Respondents' responsibilities under this Order.

3. Respondents shall provide a copy of this Order to any prospective owners or successors before a controlling interest in Respondents' assets, property rights, or stock are transferred to the prospective owner or successor. Respondents shall provide a copy of this Order to each contractor, sub-contractor, laboratory, or consultant retained to perform any Work under this Order, on the date such services are retained. Respondents shall also provide a copy of this Order to any person acting on behalf of any Respondent with respect to the Site or the Work and shall condition all contracts and subcontracts entered into hereunder upon performance of the Work in conformity with the terms of this Order. With regard to the activities undertaken pursuant to this

Order, each contractor and subcontractor shall be deemed to be related by contract to the Respondents within the meaning of section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

Notwithstanding the terms of any contract, each Respondent is responsible for compliance with this Order and for ensuring that its contractors, subcontractors and agents comply and perform all Work in accordance with this Order.

4. Not later than thirty (30) days prior to any transfer of any interest in any real property included within the Site, Respondents shall submit a true and correct copy of the transfer documents to EPA, and shall identify the transferee by name, principal business address and effective date of the transfer.

### III. DEFINITIONS

5. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or its implementing regulations. Whenever terms listed below are used in this Order or in the documents attached to this Order or incorporated by reference into this Order, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

b. "Day" shall mean a calendar day unless expressly stated to be a working day. In computing any period of time under this

Order, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the end of the next working day.

c. "Effluent Limitations" shall mean the water quality based standards established by the WDNR for discharge of treated pond water effluent to the unnamed tributary of the Root River. WDNR effluent limitations are attached hereto and made a part hereof as Attachment 4.

d. "EPA" shall mean the United States Environmental Protection Agency.

e. "National Contingency Plan" or "NCP" shall mean the National Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

f. "Paragraph" shall mean a portion of this Order identified by an arabic numeral.

g. "Performance Standards" shall mean those cleanup standards, standards of control and other substantive requirements, criteria or limitations, identified in the Record of Decision and Statement of Work, that the Remedial Action and Work required by this Order must attain and maintain.

h. "Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site, executed on June 10, 1991 by the Regional Administrator, EPA Region 5, and all attachments thereto, which is attached hereto and made a part hereof as Attachment 1.

i. "Remedial Action" shall mean those activities, except for Operation and Maintenance, to be undertaken by Respondents to implement the Remedial Design.

j. "Remedial Design" or "RD" shall mean the design for the remedy contained in the ROD performed by Menard, Inc. pursuant to an Administrative Order on Consent entered into by EPA and Menard, Inc. on September 30, 1991. This remedial design was approved by EPA on March 17, 1993 and is attached hereto and made a part hereof as Attachment 2. The RD Addendum for Pond Water Removal and Treatment is attached hereto and made a part hereof as Attachment 3.

k. "Statement of Work" or "SOW" shall mean the statement of work for implementation of the Remedial Design, Remedial Action, and Operation and Maintenance at the Site, as set forth in Attachment 5 to this Order. The Statement of Work is incorporated into this Order and is an enforceable part of this Order.

l. "Section" shall mean a portion of this Order identified by a roman numeral and includes one or more paragraphs.

m. "Section 106 Administrative Record" shall mean the Administrative Record which includes all documents considered or relied upon by EPA in preparation of this Order. The Section 106 Administrative Record Index is a listing of all documents included in the Section 106 Administrative Record.

n. "Site" shall mean the Fadrowski Drum Disposal Superfund site, encompassing approximately 20 acres, located at 6865 South

127th Street in Franklin, Wisconsin, County of Milwaukee, as described in the Record of Decision, and includes, but is not limited to, all property which has been contaminated as a result of a release from the facility.

o. "State" shall mean the State of Wisconsin.

p. "United States" shall mean the United States of America.

q. "WDNR" shall mean the Wisconsin Department of Natural Resources.

r. "Work" shall mean all activities Respondents are required to perform under this Order and all present and future attachments hereto, including but not limited to, Remedial Design, Remedial Action, Operation and Maintenance.

#### IV. DETERMINATIONS

6. The Fadrowski Drum Disposal Site (FDDS) is located on approximately 20 acres of semi-rural land in the southeast quarter of Section 1, Township 5 North, Range 21 East, Milwaukee County. The Site is situated within the boundaries of the City of Franklin, which is located just outside of the Milwaukee city limits. The area surrounding the site is a mixture of residential and commercial developments.

7. Between 1970 and 1982, the FDDS was owned and operated by Fadrowski as an unregulated, unlicensed landfill. Pursuant to applicable state regulations, the operation would have been exempt from regulation (Chapters NR 151 and NR 180 of the



Wisconsin Administrative Code) if Fadrowski had only disposed of solid waste consisting of clean earth fill, containing less than 25% by volume of brick, concrete, and building stone. During the same time frame, Fadrowski was also the principal of a waste collection and transportation company called Ed's Masonry & Trucking, Inc. (Ed's Trucking). Ed's Trucking was licensed by the WDNR to collect and transport noncombustible waste, wood matter, refuse and garbage. The customers of Ed's Trucking consisted of a wide variety of local businesses and industries, which generated a variety of wastes.

8. A WDNR inspection of the FDDS conducted in February 1981, disclosed that Fadrowski had been disposing of non-exempt solid waste at the FDDS without a license. The WDNR had warned Fadrowski that he could not dispose of regulated solid waste at the FDDS; however, Fadrowski did not apply for a solid waste disposal license. Later that same year, a former employee of Ed's Trucking, telephoned in a complaint to the WDNR in which she informed the agency of her belief that substantial quantities of non-exempt wastes were being disposed of at the FDDS by Fadrowski. WDNR employees again inspected the FDDS and found further evidence of non-exempt solid waste disposal, including metal, wood, foundry waste, crushed drums and slag-type boiler waste.

9. Later in 1981, the City of Franklin requested that Fadrowski provide a schedule for bringing the FDDS into compliance with the City's code. Fadrowski did not comply with the City code requirements.

10. In December 1982, Menard, Inc. purchased the FDDS. Menard also purchased two other parcels adjacent to the FDDS to the north, on which it planned to build its store. Menard planned to use the FDDS as a source of fill material to change the grades of the other parcels and make all three properties suitable for commercial development. Excavation and grading work began in early May 1983. During this work, various-sized containers of waste and sludges were uncovered. On June 28, 1983, a bulldozer operator ran over a drum containing an unknown liquid material, the drum ruptured and the contents squirted out. The Franklin Fire Department was notified and it, in turn, contacted the WDNR.

11. The WDNR directed Menard to retain a consultant to perform waste analyses and arrange for containment and storage of exposed waste material until it could be properly disposed of. An environmental consulting firm retained by Menard arrived at the FDDS the next day to collect additional samples of the exposed materials. Samples were collected and split with WDNR. Menard's contractor constructed containment berms and covered exposed waste material with the soil.

12. Laboratory analyses of the WDNR waste samples indicated that the drum contents were hazardous, as defined by Chapter NR 181 of the Wisconsin Administrative Code (WAC). Samples contained high concentrations of lead (32,700 ppm), chromium (6,000 ppm), the pesticide DDT (1,450) and a trace of arsenic (less than 5 ppm). The samples were also analyzed for volatile organic compounds (VOCs) and were found to contain petroleum-derived hydrocarbons, but not chlorinated hydrocarbons. Ignitability test results for the WDNR waste samples indicated that other waste samples at the FDDS were characteristic hazardous wastes because their flash points were below 140 degrees F.

13. EPA's Office of Health and Environmental Assessment has determined that carcinogenic risks from the principal threat (buried containerized wastes) exceeds  $1 \times 10^{-4}$ .

14. a. Respondent, Menard, Inc., is now and has been since on or about December 1982, the owner of the Site.

b. Respondent, INX International Ink Company, (INX), formerly Acme Printing Ink Company, arranged with a transporter for transport for disposal or treatment of hazardous substances owned or possessed by Respondent. Hazardous substances of the same kind as those owned or possessed by Respondent INX were present at the Site.

c. Respondent, Briggs & Stratton Corporation, arranged by contract or agreement, or otherwise, for the disposal or treatment of hazardous substances owned or possessed by Respondent. Hazardous substances of the same kind as those owned or possessed by Respondent, Briggs & Stratton, were present at the Site.

d. Respondent, Cardinal Fabricating Corporation, arranged with a transporter for transport for disposal or treatment of hazardous substances owned or possessed by Respondent. Hazardous substances of the same kind as those owned or possessed by Respondent, Cardinal Fabricating, were present at the Site.

e. Respondent, The Falk Corporation, arranged by contract, agreement, or otherwise for the disposal or treatment of hazardous substances owned or possessed by Respondent. Hazardous substances of the same kind as those owned or possessed by Respondent, Falk Corporation, were present at the Site.

f. Respondent, Giddings & Lewis, Inc., arranged by contract, agreement, or otherwise for the disposal or treatment of hazardous substances owned or possessed by Respondent. Hazardous substances of the same kind as those owned or possessed by Respondent, Giddings & Lewis, were present at the Site.

g. Respondent, J.I. Case Company, arranged by contractor agreement or otherwise for the disposal or treatment of hazardous substances owned or possessed by Respondent. Hazardous substances of the same kind as those owned or possessed by Respondent, J.I. Case Company, were present at the Site.

h. Respondent, Kramer Brass Foundry, Inc., arranged with a transporter for transport for disposal or treatment of hazardous substances owned or possessed by Respondent. Hazardous substances of the same kind as those owned or possessed by Respondent, Kramer Brass-Foundry, were present at the Site.

i. Respondent, Ladish Company, Inc. arranged by contract, agreement, or otherwise for the disposal or treatment of hazardous substances owned or possessed by Respondent. Hazardous substances of the same kind as those owned or possessed by Respondent, Ladish Company, were present at the Site.

j. Respondent, Macwhyte Company, arranged by contract, agreement, or otherwise for the disposal or treatment of hazardous substances owned or possessed by Respondent. Hazardous substances of the same kind as those owned or possessed by Respondent, Macwhyte Company, were present at the Site.

k. Respondent, The Manitowoc Company, Inc., arranged by contract, agreement, or otherwise for the disposal or treatment

of hazardous substances owned or possessed by Respondent.

Hazardous substances of the same kind as those owned or possessed by Respondent, The Manitowoc Company, were present at the Site.

l. Respondent, Miller Brewing Company, arranged by contract, agreement, or otherwise for the disposal or treatment of hazardous substances owned or possessed by Respondent. Hazardous substances of the same kind as those owned or possessed by Respondent, Miller Brewing Company, were present at the Site.

m. Respondent, Cooper Power Systems, Inc. arranged with a transporter for transport for disposal or treatment of hazardous substances owned or possessed by Respondent. Hazardous substances of the same kind as those owned or possessed by Respondent, Cooper Power Systems, were present at the Site.

n. Respondent, Service Painting Corporation, arranged with a transporter for transport for disposal or treatment of hazardous substances owned or possessed by Respondent. Hazardous substances of the same kind as those owned or possessed by Respondent, Service Painting Corporation, were present at the Site.

o. Respondent, Supreme Casting, Inc., arranged with a transporter for transport for disposal or treatment of hazardous substances owned or possessed by Respondent. Hazardous

substances of the same kind as those owned or possessed by Respondent, Supreme Casting, were present at the Site.

p. Respondent, Waukesha Engine Division, Division of Dresser Industries, Inc., arranged by contract, agreement, or otherwise for the disposal or treatment of hazardous substances owned or possessed by Respondent. Hazardous substances of the same kind as those owned or possessed by Respondent, Waukesha Engine Division, were present at the Site.

15. The Respondents identified in paragraph 14 are collectively referred to as "Respondents."

16. On October 15, 1989, by publication in the Federal Register, pursuant to section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Padrowski Drum Disposal Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B.

17. INX, a Potentially Responsible Party ("PRP") at the Site, commenced on April 17, 1987, a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430;

18. INX completed a Remedial Investigation ("RI") Report on February 19, 1991, and INX completed a Feasibility Study ("FS") Report on May 22, 1991;

19. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS report and of the proposed plan for remedial action on April 8, 1991, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

20. The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision ("ROD"), executed on June 10, 1991, on which the State has given its concurrence. The ROD includes a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

21. Menard, Inc., a PRP and owner of the Site, performed the RD for the Site pursuant to an Administrative Order on Consent entered into between EPA and Menard, Inc. on September 30, 1991. This RD was completed and approved by EPA on March 17, 1993.

22. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Wisconsin (the "State") on July 31, 1992 of negotiations with potentially responsible parties regarding the implementation of



the remedial action for the Site. EPA has provided the State with an opportunity to participate in said negotiations.

23. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the U.S. Department of Interior on July 31, 1992 of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship.

24. On February 10, 1993, the potentially responsible parties notified EPA that they would not enter into a Consent Decree for performance of the RA.

25. The decision by EPA on the remedial action to be implemented at the Padrowski Drum Disposal Site is embodied in a Record of Decision ("ROD"), executed on June 10, 1991, on which the State has given its concurrence. The ROD is an enforceable part of this Order and is attached hereto as Attachment 1. The ROD is supported by the Administrative Record which contains the documents and information upon which EPA based the selection of the response action. EPA's selected response action set out in the ROD has been determined to provide adequate protection of public health, welfare and the environment, to meet all Federal and State environmental laws and to be cost effective.

26. Pages 7 through 10 of the ROD provide a summary of site characteristics, including information concerning known hazardous substances released at the Site.

27. Risks to human health calculated from low-level contamination found in soils, sediments, surface water and groundwater, are within the  $1.0 \times 10^{-4}$  and  $1.0 \times 10^{-6}$  risk range. Risks between  $1.0 \times 10^{-4}$  and  $1.0 \times 10^{-6}$  are within a range acceptable to EPA but may not be considered protective due to site-specific conditions. Risks greater than  $1.0 \times 10^{-4}$  are unacceptable. EPA has made the determination that the risks from low-level contamination in soils, sediment, surface water and groundwater are not protective because of the presence of highly concentrated containerized waste (the principal threat) not considered in the Risk Assessment prepared by INX. The INX Risk Assessment failed to evaluate possible contact with the highly concentrated contaminants found in the drums buried at the site. These buried drums pose a threat should their contents be released as the drums degrade. EPA has estimated that the risks from contact with concentrated containerized waste buried at the site exceed  $1 \times 10^{-4}$  and that the hazard index from contact with the concentrated containerized waste exceeds 1.

28. Section 6 (pages 10 through 17) of the ROD identifies the populations at risk, present and potential future pathways, and the present and potential future land uses of the site. The

Section also described the risk to human health, welfare or the environment.

29. Respondent INX, conducted the Remedial Investigation/ Feasibility Study under an Administrative Order on Consent with EPA dated April 17, 1987. Respondent, Menard, Inc., conducted the Remedial Design under an Administrative Order on Consent with EPA dated September 30, 1991.

30. The major components of the remedy selected in the ROD include:

- Excavation of previously identified drums and associated characteristically hazardous soils;
- Construction of trenches to find and excavate additional containerized waste and associated characteristically hazardous soils;
- Off-site recycling or treatment and disposal of drummed wastes;
- Treatment and disposal of contaminated soil;
- Construction of a landfill cover (cap) in compliance with Chapter NR 504.07, Wisconsin Administrative Code (WAC) landfill closure requirements;
- Use of institutional controls on landfill property to limit land and groundwater use; and
- Monitoring of groundwater and surface water to ensure effectiveness of the remedial action and evaluate the need for future groundwater treatment.

31. The Fadrowski Drum Disposal Site is a "facility" as defined in section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

32. Each Respondent is a "person" as defined in section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

33. Each Respondent is a liable party as defined in section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is subject to this Order under section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

34. "Hazardous substances" as defined in section 101(14) of CERCLA, 42 U.S.C. § 9601(14) are present at the Site.

35. These hazardous substances have been and threaten to be "released" from the Facility as that term is defined in section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

36. The past disposal and migration of hazardous substances from the Facility constitutes a "release" and the potential for future migration of hazardous substances from the Site poses a threat of a "release" as defined in section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

37. The release or threat of release of one or more hazardous substances from the Facility is or may be presenting an imminent and substantial endangerment to the public health or welfare or the environment.

38. The actions required by this Order are necessary to protect the public health, welfare, and the environment and are consistent with the National Contingency Plan (NCP), 40 CFR Part 300, as amended, and CERCLA.

#### V. NOTICE TO THE STATE

39. Prior to issuing this Order, EPA notified the State of Wisconsin Department of Natural Resources, that EPA intended to issue this Order. EPA will consult with the State and the State will have the opportunity to review and comment to EPA regarding all work to be performed, deliverables, and any other issues which arise while the Order remains in effect.

#### VI. ORDER

40. Based on the foregoing, each Respondent is hereby ordered to comply with all of the provisions of this Order, including but not limited to all present and future Attachments to this Order, all documents incorporated by reference into this Order, and all schedules and deadlines contained in this Order, attached to this Order, or incorporated by reference into this Order.

#### VII. WORK TO BE PERFORMED

41. Within fifteen (15) days after the effective date of this Order, each Respondent that owns real property comprising any part of the Site shall record Notice of and/or a copy of this Order as well as a Declaration of Restriction on Use of Real

Property in the form of Appendix A to the Final Remedial Design in the appropriate governmental office where land ownership and transfer records are filed or recorded, and shall ensure that the recording of said notice and/or Order is indexed to the title of each and every parcel of property owned by said Respondent at the Site, so as to provide notice to third parties of the issuance and terms of this Order with respect to those properties. Respondents shall, within 15 days after the effective date of this Order, send notice of such recording and indexing to EPA.

#### A. Remedial Action

42. Within forty-five (45) days after the effective date of this Order, Respondents shall submit a Remedial Action Workplan (RA Workplan) and a Construction Quality Assurance Plan for review and approval. The RA Workplan shall be developed in accordance with the ROD, and the attached Statement of Work, and shall be consistent with the final design as approved by EPA. The RA Workplan shall include at least the following: (1) Plan for Site Access; (2) Health and Safety Plan Review/Revision; (3) Questions based on review of RD; (4) RA Project Schedule; and (5) Plan for Satisfaction of Permitting Requirements. The Construction Quality Assurance Plan (CQA Plan) shall identify the initial formulation of Respondents' Remedial Action Project Team (including the Supervising Contractor) and outline the responsibility, authority and qualifications of each organization and key personnel involved in the implementation of the RA. The

CQA Plan shall also define the sampling and inspection activities required to verify that the completed RA will meet or exceed all design criteria, plans and specifications.

43. Upon approval of the (Amended) RA Workplan and the CQA Plan by EPA, Respondents shall implement the (Amended) RA Workplan and CQA Plan according to the schedules in the (Amended) RA Workplan. Unless otherwise directed by EPA, Respondents shall not commence remedial action at the Site prior to approval of the (Amended) RA Workplan.

44. All Workplans and deliverables thereunder, as described throughout this Order and the SOW, shall be submitted to U.S. EPA. All Workplans and deliverables will be reviewed and either approved, approved with modifications, or disapproved by EPA, in consultation with WDNR. In the event of approval or approval with modifications by EPA, Respondents shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA. If the Workplan or other deliverable is approved with modifications or disapproved, EPA will provide, in writing, comments or modifications required for approval. Respondents shall amend the Workplan or other deliverable to incorporate only those comments or modifications required by U.S. EPA. Within fourteen (14) days of the date of EPA's written notification of approval with modifications or disapproval, Respondents shall submit an Amended Workplan or other

deliverable. EPA shall review the Amended Workplan or deliverable and either approve or disapprove it. Failure to submit a Workplan, Amended Workplan or other deliverable shall constitute noncompliance with this Order. Submission of an Amended Workplan or other deliverable which fails to incorporate all of EPA's required modifications, or which includes other unrequested modifications, shall also constitute noncompliance with this Order. Approval by EPA of the (Amended) Workplan or other deliverable shall cause said approved (Amended) Workplan or other deliverable to become an enforceable part of this Order. If any (Amended) Workplan is not approved by EPA, Respondents shall be deemed to be in violation of this Order.

45. Notwithstanding any action by EPA or the State, Respondents remain fully responsible for achievement of the performance standards in the Record of Decision and Statement of Work. Nothing in this Order, or in EPA's approval of any (amended) work plan or other deliverable, shall be deemed to constitute a warranty or representation of any kind by EPA that full performance of the Remedial Action will achieve the performance standards set forth in the ROD and in the Statement of Work. Respondents' compliance with such approved documents does not foreclose EPA from seeking additional work to achieve the applicable performance standards.



46. All materials removed from the Site shall be disposed of or treated at a facility, approved in advance by EPA's RPM, and in accordance with section 121(d)(3) of CERCLA, 42 U.S.C.

§ 9621(d)(3); with the U.S. EPA "Revised Off-Site policy," OSWER Directive 9834.11, November 13, 1987; and with all other applicable Federal, state, and local requirements. Prior to any off-site shipment of hazardous substances from the Site to an out-of-state waste management facility, Respondents shall provide written notification to the appropriate state environmental official in the receiving state and to EPA's RPM of such shipment of hazardous substances. However, the notification of shipments to the State shall not apply to any off-Site shipments when the total volume of all shipments from the Site to the State will not exceed ten (10) cubic yards.

a. The notification shall be in writing, and shall include the following information, where available: (1) the name and location of the facility to which the hazardous substances are to be shipped; (2) the type and quantity of the hazardous substances to be shipped; (3) the expected schedule for the shipment of the hazardous substances; and (4) the method of transportation. Respondents shall notify the receiving state of major changes in the shipment plan, such as a decision to ship the hazardous substances to another facility within the same state, or to a facility in another state.

b. All hazardous substances removed from the Facility or vicinity shall be disposed of or treated at a Facility approved

by EPA's RPM, and in compliance with the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. Section 9601, et seq., as amended; the EPA Revised Off-Site Policy; and all other applicable Federal, State and local requirements. The identity of the receiving facility and state will be determined by Respondents following the award of the contract for Remedial Action construction. Respondents shall provide all relevant information, including information under the categories noted in paragraph 46(a) above, on the off-Site shipments as soon as practicable after the award of the contract and before the hazardous substances are actually shipped.

47. Respondents shall cooperate with EPA in providing information regarding the work to the public. When requested by EPA, Respondents shall participate in the preparation of such information for distribution to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

#### VIII. ADDITIONAL RESPONSE ACTIONS

48. In the event that EPA determines that additional work or modifications to work is necessary to meet applicable performance standards, or that modifications to work are necessary to maintain consistency with the final remedy, EPA will notify Respondents that additional response actions are necessary.

EPA may also require Respondents to modify any plan, design, or other deliverable required by this Order, including any approved modifications.

49. Within sixty (60) days of receipt of notice from EPA that additional response activities are necessary, Respondents shall submit for approval an Additional RD/RA Workplan pursuant to paragraph 44 herein. The Additional RD/RA Workplan shall conform to this Order's applicable requirements for RD and RA Workplans. Upon EPA's approval of the (Amended) Additional RD/RA Workplan, the (Amended) Additional RD/RA Workplan shall become an enforceable part of this Order, and Respondents shall implement the (Amended) Additional RD/RA Workplan for additional response activities in accordance with the standards, specifications, and schedule contained therein. Failure to submit an Additional Workplan shall constitute noncompliance with this Order.

#### IX. EPA PERIODIC REVIEW

50. Under section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and any applicable regulations, EPA may review the Site to assure that the work performed pursuant to this Order adequately protects human health and the environment. Until such time as EPA certifies completion of the work, Respondents shall conduct the requisite studies, investigations, or other response actions as determined necessary by EPA in order to permit EPA to conduct the review under section 121(c) of CERCLA. As a result of any review

performed under this paragraph, Respondents may be required to perform additional work or to modify work previously performed.

#### X. ENDANGERMENT AND EMERGENCY RESPONSE

51. In the event of any event during the performance of the work which causes or threatens to cause a release of a hazardous substance or which may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action to prevent, abate, or minimize the threat, and shall immediately notify EPA's RPM or alternate RPM. If neither of these persons is available Respondents shall notify the EPA Emergency Response Unit, Region 5. Respondents shall take further action in consultation with EPA's RPM and in accordance with all applicable provisions of this Order, including but not limited to the Health and Safety Plan and the Contingency Plan. In the event that Respondents fail to take appropriate response action as required by this paragraph, and EPA takes that action instead, Respondents shall reimburse EPA for all costs of the response action not inconsistent with the NCP. Respondents shall pay the response costs in the manner described in Section XIX of this Order, within thirty (30) days of EPA's demand for payment.

52. Nothing in the preceding paragraph shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action to protect human health and the environment or

to prevent, abate, or minimize an actual or threatened release of hazardous substances on, at, or from the Site.

#### XI. PROGRESS REPORTS

53. In addition to the other deliverables set forth in this Order, Respondents shall provide monthly progress reports to EPA with respect to actions and activities undertaken pursuant to this Order. The progress reports shall be submitted on or before the tenth day of each month following the effective date of this Order. Respondents' obligation to submit progress reports continues until EPA gives Respondents written notice under paragraph 91. At a minimum these progress reports shall:

(1) describe the actions which have been taken to comply with this Order during the prior month; (2) include all results of sampling and tests and all other data received by Respondents and not previously submitted to EPA; (3) describe all work planned for the next 90 days with schedules relating such work to the overall project schedule for RD/RA completion; and (4) describe all problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

#### XII. QUALITY ASSURANCE, SAMPLING AND DATA ANALYSIS

54. Respondents shall use the quality assurance, quality control, and chain of custody procedures described in the "EPA NEIC Policies and Procedures Manual," May 1978, revised May 1986,

EPA-330/9-78-001-R; EPA's "Guidelines and Specifications for Preparing Quality Assurance Program Documentation," June 1, 1987; EPA's "Data Quality Objective Guidance," (EPA/540/G87/003 and 004), and any amendments to these documents, while conducting all sample collection and analysis activities required herein by any plan. To provide quality assurance and maintain quality control, Respondents shall:

a. Prior to the commencement of any sampling and analysis under this Order, Respondents shall submit a Quality Assurance Project Plan (QAPP) to the U.S. EPA that is consistent with the SOW, the (Amended) Workplan and EPA's "Interim Guidelines and Specifications For Preparing Quality Assurance Project Plans" (QAM-005/80) and any subsequent amendments.

b. Prior to the development and submittal of a QAPP, Respondents shall attend a pre-QAPP meeting sponsored by EPA to identify all monitoring and data quality objectives. U.S. EPA, after review of the submitted QAPP, will either approve, conditionally approve, or disapprove the QAPP. Upon notification of conditional or disapproval, Respondents shall make all required modifications to the QAPP within fourteen (14) days of receipt of such notification.

c. Use only laboratories which have a documented Quality Assurance Program that complies with EPA guidance document QAMS-005/80 and subsequent amendments.

d. Ensure that the laboratory used by the Respondents for analyses, performs according to a method or methods deemed

satisfactory to EPA and submits all protocols to be used for analyses to EPA at least 30 days before beginning analysis.

e. Ensure that EPA personnel and EPA's authorized representatives are allowed access to the laboratory and personnel utilized by the Respondents for analyses.

55. Respondents shall notify EPA not less than fourteen (14) days in advance of any sample collection activity. At the request of EPA, Respondents shall allow split or duplicate samples to be taken by EPA or its authorized representatives of any samples collected by Respondents with regard to the Site or pursuant to the implementation of this Order. In addition, EPA shall have the right to take any additional samples that EPA deems necessary.

#### KIII. COMPLIANCE WITH APPLICABLE LAWS

56. All activities by Respondents pursuant to this Order shall be performed in accordance with the requirements of all Federal and state laws and regulations. EPA has determined that the activities contemplated by this Order are consistent with the National Contingency Plan (NCP).

57. Except as provided in section 121(e) of CERCLA and the NCP, no permit shall be required for any portion of the Work conducted entirely on-Site. Where any portion of the Work requires a Federal or state permit, Respondents shall submit timely

applications and take all other actions necessary to obtain and to comply with all such permits or approvals.

58. This Order is not and shall not be construed to be, a permit issued pursuant to any Federal or state statute or regulation.

#### XIV. REMEDIAL PROJECT MANAGER

59. All communications, whether written or oral, from Respondents to EPA shall be directed to EPA's Remedial Project Manager. Respondents shall submit to EPA four copies of all documents, including plans, reports, and other correspondence, which are developed pursuant to this Order, and shall send these documents by certified mail.

EPA's Remedial Project Manager is:

Ms. Mary M. Tierney (HSRW-6J)  
Remedial Project Manager  
U.S. EPA Region V  
77 West Jackson  
Chicago, Illinois 60604  
Phone: (312) 886-4785  
Fax: (312) 353-5541

EPA's Alternate Remedial Project Manager is:

Ms. Margaret M. Guerriero (HSRW-6J)  
Acting Chief - Michigan/Wisconsin Section II  
U.S. EPA Region V  
77 West Jackson  
Chicago, Illinois 60604  
Phone: (312) 886-0399  
Fax: (312) 353-5541

60. EPA may change its Remedial Project Manager or Alternate Remedial Project Manager. If EPA changes its Remedial Project Manager or Alternate Remedial Project Manager, EPA will inform



Respondents in writing of the name, address, and telephone number of the new Remedial Project Manager or Alternate Remedial Project Manager.

61. EPA's RPM and Alternate RPM shall have the authority lawfully vested in a Remedial Project Manager (RPM) and On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. EPA's RPM or Alternate RPM shall have authority, consistent with the National Contingency Plan, to halt any work required by this Order, and to take any necessary response action.

#### XV. PROJECT COORDINATOR AND CONTRACTORS

62. All aspects of the Work to be performed by Respondents pursuant to this Order shall be under the direction and supervision of a Project Coordinator qualified to undertake and complete the requirements of this Order. Within fifteen (15) days after the effective date of this Order, Respondents shall notify EPA in writing of the name and qualifications of the Project Coordinator, including primary support entities and staff, proposed to be used in carrying out Work under this Order.

63. In the event Respondents select a contractor to assist in the performance of any activity required by this Order, Respondents shall submit a copy of the contractor solicitation documents to EPA not later than five (5) days after publishing

the solicitation documents. Respondents shall submit complete copies of all bid packages received from all contract bidders when Respondents notify EPA of the identity of the proposed construction contractor.

64. Within ten (10) days after EPA approves the RA Workplan, Respondents shall identify a proposed construction contractor and notify EPA in writing of the name, title, and qualifications of the construction contractor proposed to be used in carrying out work under this Order. EPA reserves the right to disapprove the proposed construction contractor. In the event that EPA disapproves the proposed construction contractor, Respondents shall submit the name, title and qualifications of a new proposed contractor within ten (10) days of EPA's disapproval of the contractor previously proposed.

65. At least seven (7) days prior to commencing any work at the Site pursuant to this Order, Respondents shall submit to EPA a certification that Respondents or their contractors and subcontractors have adequate insurance coverage or have indemnification for liabilities for injuries or damages to persons or property which may result from the activities to be conducted by or on behalf of Respondents pursuant to this Order. Respondents shall ensure that such insurance or indemnification is maintained for the duration of the Work required by this Order.

66. EPA retains the right to disapprove of the Project Coordinator, and any contractor, including but not limited to remedial design contractors and construction contractors retained by the Respondents. In the event EPA disapproves a Project Coordinator or contractor, Respondents shall retain a new project coordinator or contractor to perform the work, and such selection shall be made within thirty (30) days following the date of EPA's disapproval. If at any time Respondents propose to use a new project coordinator or contractor, Respondents shall notify EPA of the identity of the new project coordinator or contractor at least fifteen (15) days before the new project coordinator or contractor performs any work under this Order.

#### XVI. SITE ACCESS AND DOCUMENT AVAILABILITY

67. In the event that the Site, the off-Site area that is to be used for access, property where documents required to be prepared or maintained by this Order are located, or other property subject to or affected by this response action, is owned in whole or in part by parties other than those bound by this Order, Respondents will obtain, or use their best efforts to obtain, site access agreements from the present owners within sixty (60) days of the effective date of this Order. Said agreements shall provide access for EPA, its contractors and oversight officials, the state and its contractors, and Respondents or Respondents' authorized representatives and contractors. Said agreements shall specify that Respondents are not EPA's representative with

respect to liability associated with Site activities. Copies of such agreements shall be provided to EPA prior to Respondents' initiation of field activities. Respondents' best efforts shall include providing reasonable compensation to any off-Site property owner. If access agreements are not obtained within the time referenced above, Respondents shall immediately notify EPA of its failure to obtain access.

68. If Respondents cannot obtain the necessary access agreements, EPA may exercise non-reviewable discretion and; (1) use its legal authorities to obtain access for the Respondents; (2) conduct response actions at the property in question; or (3) terminate this Order. If EPA conducts a response action and does not terminate the Order, Respondents shall perform all other activities not requiring access to that property. Respondents shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables. Respondents shall reimburse EPA, pursuant to Section XIX of this Order, for all response costs (including attorney fees) incurred by the United States to obtain access for Respondents.

69. Respondents shall allow EPA and its authorized representatives and contractors to enter and freely move about all property at the Site and off-Site areas subject to or affected by the Work under this Order or where documents required to be prepared or maintained by this Order are located, for the

purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the Site or Respondents and its representatives or contractors pursuant to this Order; reviewing the progress of the Respondents in carrying out the terms of this Order; conducting tests as EPA or its authorized representatives or contractors deem necessary; using a camera, sound recording device or other documentary type equipment; and verifying the data submitted to EPA by Respondents. Respondents shall allow EPA and its authorized representatives to enter the Site, to inspect and copy all records, files, photographs, documents, sampling and monitoring data, and other writings related to work undertaken in carrying out this Order. Nothing herein shall limit EPA's right of entry or inspection authority under Federal law.

#### XVII. RECORD PRESERVATION

70. On or before the effective date of this Order, Respondents shall submit a written certification to EPA that they have not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to their potential liability with regard to the Site since the time of their notification of potential liability by EPA or the State. Respondents shall not dispose of any such documents without prior approval by EPA. Upon EPA's request, Respondents shall make all such documents available to EPA.

71. Respondents shall provide to EPA upon request, copies of all documents and information within their possession or control or that of any of their contractors or agents relating to activities at the Site or to the implementation of this Order, including but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information. Respondents shall also make available to EPA for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

72. Until ten (10) years after EPA provides notice pursuant to paragraph 91 of this Order, Respondents shall preserve, and shall instruct their contractors and agents to preserve, all documents, records, and information of whatever kind, nature or description relating to the performance of the Work. Upon the conclusion of this document retention period, Respondents shall notify the United States at least ninety (90) days prior to the destruction of any such records, documents or information, and, upon request of the United States, Respondents shall deliver all such documents, records and information to EPA.

73. Respondents may assert a claim of business confidentiality covering part or all of the information submitted to EPA pursuant to the terms of this Order under 40 C.F.R. § 2.203, provided such

claim is not inconsistent with section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7) or other provisions of law. This claim shall be asserted in the manner described by 40 C.F.R. § 2.203(b) and substantiated by Respondents at the time the claim is made. Information determined to be confidential by EPA will be given the protection specified in 40 C.F.R. Part 2. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA or the state without further notice to the Respondents. Respondents shall not assert confidentiality claims with respect to any data or documents related to Site conditions, sampling, or monitoring.

74. Respondents shall maintain, for the period during which this Order is in effect, an index of documents that Respondents claim contain confidential business information. The index shall contain, for each document, the date, author, addressee, and subject of the document. Upon written request from EPA, Respondents shall submit a copy of the index to EPA.

#### XVIII. DELAY IN PERFORMANCE

75. Any delay in performance of this Order that, in EPA's judgment, is not properly justified by Respondents under the terms of this section shall be considered a violation of this Order. Any delay in performance of this Order shall not affect Respondents' obligations to fully perform all obligations under the terms and conditions of this Order.

76. Respondents shall notify EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone to EPA's RPM or Alternate RPM within forty eight (48) hours after Respondents first know or should have known that a delay might occur. Respondents shall adopt all reasonable measures to avoid or minimize any such delay. Within five (5) business days after notifying EPA by telephone, Respondents shall provide written notification fully describing the nature of the delay, any justification for delay, any reason why Respondents should not be held strictly accountable for failing to comply with any relevant requirements of this Order, the measures planned and taken to minimize the delay, and a schedule for implementing the measures that will be taken to mitigate the effect of the delay. Increased costs or expenses associated with implementation of the activities called for in this Order is not a justification for any delay in performance.

#### XIX. REIMBURSEMENT OF RESPONSE COSTS

77. Respondents shall reimburse EPA, upon written demand, for all response costs incurred by the United States in overseeing Respondents' implementation of the requirements of this Order. EPA may submit to Respondents on a periodic basis an accounting of all oversight response costs incurred by the United States with respect to this Order. EPA's Itemized Cost Summary Reports,



or such other summary as may be certified by EPA, shall serve as the basis for payment demands.

78. Respondents shall, within thirty (30) days of receipt of each EPA accounting, remit a certified or cashier's check for the amount of those costs. Interest shall accrue from the later of the date that payment of a specified amount is demanded in writing or the date of the expenditure. The interest rate is the rate established by the Department of the Treasury pursuant to 31 U.S.C. § 3717 and 4 C.F.R. § 102.13.

79. Checks shall be made payable to the Hazardous Substances Superfund and shall include the name of the Site, the Site identification number, the account number and the title of this Order. Checks shall be forwarded to:

U.S. Environmental Protection Agency  
Superfund Accounting  
P.O. Box 70753  
Chicago, IL 60673

Respondents shall send copies of each transmittal letter and check to the EPA's RPM.

XX. UNITED STATES NOT LIABLE

80. The United States and EPA are not to be construed as parties to, and do not assume any liability for, any contract entered into by the Respondents to carry out the activities pursuant to this Order. The proper completion of the Work under this Order is solely the responsibility of the Respondents. The United

States and EPA, by issuance of this Order, also assume no liability for any injuries or damages to persons or property resulting from acts or omissions by Respondents, or their directors, officers, employees, agents, representatives, successors, assigns, contractors, or consultants in carrying out any action or activity required by this Order.

#### XXI. ENFORCEMENT AND RESERVATIONS

81. EPA reserves the right to bring an action against Respondents under section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order and not reimbursed by Respondents. This reservation shall include but not be limited to past costs, direct costs, indirect costs, the costs of oversight, the costs of compiling the cost documentation to support oversight cost demand, as well as accrued interest as provided in section 107(a) of CERCLA.

82. Notwithstanding any other provision of this Order, at any time during the response action, EPA may perform its own studies, complete the response action (or any portion of the response action) as provided in CERCLA and the NCP, and seek reimbursement from Respondents for its costs, or seek any other appropriate relief.

83. Nothing in this Order shall preclude EPA from taking any additional enforcement actions, including modification of this Order or issuance of additional Orders, and/or additional remedial or removal actions as EPA may deem necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA, 42 U.S.C. § 9606(a), RCRA, or any other applicable law. This Order shall not affect any Respondent's liability under CERCLA section 107(a), 42 U.S.C. § 9607(a), for the costs of any such additional actions.

84. Notwithstanding any provision of this Order, the United States hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA, RCRA and any other applicable statutes or regulations.

85. Respondents shall be subject to civil penalties under section 106(b) of CERCLA, 42 U.S.C. § 9606(b), of not more than \$25,000 for each day in which Respondents willfully violates, or fails or refuses to comply with this Order without sufficient cause. In addition, failure to properly provide response action under this Order, or any portion hereof, without sufficient cause, may result in liability under section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), for punitive damages in an amount at least equal to, and not more than three times the amount of any costs incurred by the Fund as a result of such failure to take proper action.

86. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person for any liability it may have arising out of or relating in any way to the Site.

87. If a court issues an order that invalidates any provision of this Order or finds that Respondents have sufficient cause not to comply with one or more provisions of this Order, Respondents shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

#### XXII. ACCESS TO ADMINISTRATIVE RECORD

88. The Section 106 Administrative Record is available for review on normal business days between the hours of 9:00 a.m. and 5:00 p.m. at the U.S. EPA, Region V, 77 West Jackson Boulevard Chicago, Illinois.

#### XXIII. NOTICE OF INTENT TO COMPLY

89. On or before the effective date of this Order, each Respondent must submit to EPA written notice stating its unequivocal intention to comply with all terms of this Order. Each Respondent's written notice shall describe, using facts that exist on or prior to the effective date of this Order, any "sufficient cause" defenses asserted by Respondents under sections 106(b) and 107(c)(3) of CERCLA. The absence of a response by EPA to the notice required by this paragraph shall

not be deemed to be acceptance of Respondent's assertions. In the event any Respondent fails to provide such written notice, that Respondent shall be deemed to have failed to comply with this Order.

#### XXIV. EFFECTIVE DATE AND TERMINATION

90. This Order shall become effective thirty (30) after the date of issuance.

91. The provisions of this Order shall be deemed to be satisfied when EPA notifies Respondents in writing that Respondents have demonstrated, to U.S. EPA's satisfaction, that all terms of the Order have been completed. This notice shall not, however, terminate Respondents obligation to comply with paragraph 72 of this Order (relating to record preservation).

#### XXV. OPPORTUNITY TO CONFER

92. Respondents may, within ten (10) days after the date this Order is issued, request a conference with the EPA to discuss this Order. If requested, the conference shall occur on May 13, 1993, at EPA offices located at 77 West Jackson in Chicago, Illinois.

93. The purpose and scope of the conference shall be limited to issues involving the implementation of the response actions required by this Order and the extent to which Respondents intend

to comply with this Order. This conference is not an evidentiary hearing, and does not constitute a proceeding to challenge this Order. It does not give Respondents a right to seek review of this Order, or to seek resolution of potential liability. No official stenographic record of the conference will be made. At any conference held pursuant to Respondents' request, Respondents may appear in person or by an attorney or other representative. Requests for a conference must be by telephone followed by written confirmation to EPA's RPM.

So Ordered, this 21 day of April, 1992.

BY: 

Director, Waste Management Division

U.S. Environmental Protection Agency, Region V